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PROGRAMME MATTERS

Progress report on the development of an international legally binding instrument for the application of the prior informed consent (PIC) procedure for certain hazardous chemicals in international trade, and the consideration of further measures to reduce the risks from hazardous chemicals

Report of the Executive Director

Summary

The present report has been prepared in response to Governing Council decision 18/12 of 26 May 1995, by which the Council authorized the Executive Director to prepare for and convene, together with the Food and Agriculture Organization of the United Nations and in consultation with Governments and other relevant international organizations, an Intergovernmental Negotiating Committee, with a mandate to prepare an international legally binding instrument for the application of the prior informed consent (PIC) procedure for certain hazardous chemicals in international trade. It also requested the Executive Director to convene, together with the Director-General of Food and Agriculture Organization of the United Nations, a diplomatic conference for the purpose of adopting and signing such an instrument, preferably not later than early 1997. In addition, the Council invited the Executive Director to convene, in cooperation with the Food and Agriculture Organization of the United Nations, a Government-designated group of experts, to consider, taking into account the work done in all relevant forums, including the Intergovernmental Forum on Chemical Safety, the negotiations on the convention of prior informed consent and the activities to be undertaken in accordance with the Governing Council decision 18/32 of 25 May 1995 on persistent organic pollutants, and recommend what further measures are needed

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to reduce the risks from a limited number of hazardous chemicals, either within or beyond the scope of existing prior informed consent procedure, and requested the Executive Director to report thereon to the Governing Council at its nineteenth session.

The present report discusses the progress made in the development of the legally binding instrument on prior informed consent and the work done by the Government-designated Group of Experts on Further Measures to Reduce the Risks from a Limited Number of Chemicals.

Suggested action by the Governing Council

The Governing Council may wish to

1. Take note of the present progress report on the development of an international legally binding instrument for the application of the prior informed consent (PIC) procedure for certain hazardous chemicals in international trade, and the consideration of further measures to reduce the risks from hazardous chemicals;

2. Encourage finalization in 1997 of the negotiations for a legally binding instrument for the application of the prior informed consent (PIC) procedure for certain hazardous chemicals in international trade;

3. Take note of the work done by the Government-designated Group of Experts on Further Measures to Reduce the Risks from a Limited Number of Chemicals;

4. Consider the recommendations made by the Group of Experts;

5. Welcome the Executive Director's efforts to seek the views of Governments on the possible benefits of an integrated international mechanism concerning the management of hazardous chemicals and encourage her to continue these activities.

I. NEGOTIATIONS FOR AN INTERNATIONAL LEGALLY BINDING INSTRUMENT FOR THE APPLICATION OF THE PRIOR INFORMED CONSENT PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND PESTICIDES IN INTERNATIONAL TRADE

1. In accordance with the mandate given in Governing Council decision 18/12, the first session of the Intergovernmental Negotiating Committee (INC) for an International Legally Binding Instrument for the Application of the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade was convened in Brussels from 11 to 15 March 1996, hosted by the Government of Belgium. The session was attended by representatives of 80 Governments, the European Commission and a number of United Nations bodies and specialized agencies, intergovernmental organizations and non-governmental organizations. The full report on the work of the session has been circulated to all Governments as document UNEP/FAO/PIC/INC.1/10. Ms. Maria Celina de Azevedo Rodriguez of Brazil was elected Chairperson, with Mr. Mohammed El-Zarka of Egypt, Mr. Wang Zhijia of China, Mr. Yuri Kundiev of Ukraine and Mr. William Murray of Canada as the other members of the Bureau. Mr. Marc Pallemaerts of Belgium served as an ex officio member of the Bureau for the session.

2. The Committee made rapid progress, agreed quickly on the Rules of Procedure, and completed a preliminary review of a draft outline of the future agreement. It also established a working group to further clarify which groups of chemicals might be included under the future agreement.

3. The second session of the Committee was held at UNEP headquarters from 16 to 20 September 1996. It was attended by representatives of 86 Governments, the European Commission and a number of United Nations bodies and specialized agencies, intergovernmental organizations and non-governmental organizations. The full report on the work of the session has been circulated as document UNEP/FAO/PIC/INC.2/7. At the session, the Committee established a Technical Working Group and a Legal Drafting Group.

4. The Committee made considerable progress, and there are now 21 pages of draft articles, many of which have been discussed extensively. There was a proposal that the scope of the instrument be developed to allow some flexibility in order to include the possibility of considering measures beyond the existing PIC procedure, but a majority of delegations supported a legally binding instrument which follows more closely the existing, voluntary PIC procedure.

5. There was wide agreement that, while the Committee had made substantial progress, many facets of the instrument needed further detailed consideration. A need was seen for at least one further negotiating session before the final session. The third session will be held in Geneva from 26 to 30 May 1997, hosted by the Government of Switzerland. The European Commission has indicated its willingness to make a significant contribution towards the holding of an additional session in Brussels later in 1997.

6. The final session and the Diplomatic Conference are envisaged to be held in late 1997 in the city of Rotterdam, hosted by the Government of the Netherlands.

II. THE VOLUNTARY PIC PROGRAMME

7. The implementation of the existing, voluntary PIC procedure has continued through the UNEP/FAO Joint Programme. Since the eighteenth session of the Governing Council, 12 additional Governments have joined, bringing the total to 148 participating Governments as of 1 October 1996. Decision Guidance Documents for a further 6 pesticides are to be published late 1996, and an additional 12 are being drafted for publication during 1997. In the discussions linked to the development of a legally binding instrument, it has been emphasized at intergovernmental meetings that this work should not hinder the continued implementation of the voluntary procedure.

III. WORK OF THE GOVERNMENT-DESIGNATED GROUP OF EXPERTS ON FURTHER MEASURES TO REDUCE THE RISKS FROM A LIMITED NUMBER OF CHEMICALS

A. Recommendations of the Group of Experts

8. Pursuant to Governing Council decision 18/12, the Government-designated Group of Experts on Further Measures to Reduce the Risks from a Limited Number of Chemicals met in Copenhagen from 16 to 19 April 1996. The meeting was hosted by the Government of Denmark and attended by invited experts from 23 countries, the European Commission and a number of United Nations organizations, specialized agencies and intergovernmental and non-governmental organizations. Mr. Niels Juul Jensen of Denmark was elected to the Chair, with Mr. Willem Scott of South Africa serving as Rapporteur. The full report with the full recommendations of the Group of Experts is available as an information document (UNEP/GC.19/INF.7).

9. The annex to the present document contains the Group's recommendations in the following areas:

(a) Unwanted stocks of pesticides and other chemicals;

(b) Capacity-building;

(c) Inadequate information; and

(d) Issues related to risk reduction from a limited number of hazardous chemicals, including possible bans or phase-outs.

B. Invitation by the Group of Experts

10. The Group of Experts also took note of a proposal by Belgium and the Netherlands, which received broad support, regarding the possible benefits of an integrated international mechanism concerning the management of hazardous chemicals and invited the Executive Director of UNEP, the FAO Director-General, and the President of the Intergovernmental Forum on Chemical Safety (IFCS) to seek the views of Governments on this issue for consideration by

the UNEP Governing Council at its nineteenth session, by the FAO Council, and by IFCS. The Group of experts endorsed the view that consideration of such a measure should not impede progress on current or possible future negotiations to manage hazardous chemicals.

11. A full report with a summary of Governments' views will be available at the Governing Council.

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Annex

RECOMMENDATIONS OF THE
GOVERNMENT-DESIGNATED GROUP OF EXPERTS

1. Unwanted stocks of pesticides and other chemicals

1. That UNEP, in cooperation with FAO and in consultation with the secretariats of the Basel Convention, the World Health Organization, the International Labour Organization and other members of the Inter-Organization Programme for the Sound Management of Chemicals (IOMC), as appropriate, constitute an expert group on obsolete and outdated chemicals to provide advice to Governments on:

(a) The further definition of problems, in particular in developing countries and countries with economies in transition;

(b) The prevention, management, reuse or eventual safe disposal of obsolete and outdated pesticides and chemicals;

(c) The further development of guidance documentation for Governments on the prevention, management, reuse or safe disposal of obsolete and outdated pesticides and chemicals;

2. That the Governing Council call upon receiving countries to prioritize their needs and integrate them into their requests for existing funds provided by bilateral and multilateral donors;

3. That the Governing Council call upon donors, in close cooperation with FAO and UNEP and in consultation with industry and other non-governmental organizations, and through enhanced donor coordination, to mobilize financing for the safe management and disposal of obsolete and outdated pesticides and chemicals.

2. Capacity-building

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That the Governing Council:

(a) Call upon IFCS to identify country needs for capacity-building for the sound management of chemicals and recommend providing a mechanism to encourage partnerships between recipients and donors of technical assistance to help coordinate these activities;

(b) Call upon member organizations of the Inter-Organization Programme for the Sound Management of Chemicals (IOMC), UNITAR and bilateral agencies to further strengthen the coordination of their capacity-building activities;

II

That countries cooperate regionally to harmonize their approaches to manage chemicals safely;

III

That the Governing Council:

(a) Recommend that donors, bilateral/regional/international cooperation and assistance organizations and recipient countries give a higher priority to programmes for the improvement of chemicals management, including programmes which could facilitate training, technical assistance and development of clean technology and safer alternatives to chemicals and chemical use, especially in developing countries and countries with economies in transition;

(b) Take into consideration the global significance of the health and environmental problems caused by chemicals, for example persistent organic pollutants, and the need to develop the capacity of developing countries and countries with economies in transition to manage chemicals safely;

(c) Take into account the special concerns of countries of transit for banned or severely restricted chemicals who may not yet have joined the PIC procedure, so that they could benefit by the application of such procedures to the extent possible;

(d) Request that the Council of the Global Environment Facility (GEF) takes also into consideration the global significance referred in subparagraph (b) above in order to investigate the relationship between the need of countries to develop chemicals-management capacity, in particular to address the global risks posed by local emissions and discharges of persistent organic pollutants, and the four existing "windows" of the GEF operational strategy, as well as other possible options;

(e) Support the action under way within the Organisation for Economic Cooperation and Development (OECD) and multilateral development banks to develop new or review existing guidelines to ensure that investments involving chemical manufacture or use are made in an environmentally sound manner and, in the case of the multilateral development banks, include in appropriate sectoral projects, the funding of the development of sound chemicals-management infrastructure;

IV

That the Governing Council invite Governments to develop and implement In developing legislation, Governments should, as appropriate, take into consideration relevant activities undertaken by and through intergovernmental organizations a/ including activities related to instruments such as

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a/ For example, the United Nations Environment Programme (UNEP), the Food and Agricultural Organization of the United Nations (FAO), the International Labour Organization (ILO), the World Health Organization (WHO), the United Nations Industrial Development Organization (UNIDO), and the

conventions, codes, and guidance materials. In accordance with their respective mandates, United Nations Institute for Training and Research (UNITAR) and the member organizations of the Inter-Organization Programme for the Sound Management of Chemicals (IOMC) should assist in building the legislative capacities of Governments.

3. Inadequate information

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That the Governing Council:

(a) Direct UNEP, as Task Manager for programme area C of chapter 19 of Agenda 21, to report on behalf of IOMC to the Intergovernmental Forum on Chemical Safety (IFCS) at its next meeting, on the activities of the IOMC member organizations to promote information exchange on chemicals;

(b) Request IFCS to recommend to the IOMC member organizations on actions to improve delivery of information, taking into consideration the information needs of consumers, workers, general population, non-governmental organizations, Governments, and others concerned with chemical safety and appropriate provisions for protection of data confidentiality. The recommendations should take into consideration the comparative advantages of each IOMC member organization. The types of information under consideration should include, but not be limited to, chemical hazards, risks, exposure, use, properties, fate, information on production and trade worldwide and nationally, cleaner alternatives and alternative technologies, accident prevention and preparedness, emergency response, socio-economics, and disposal;

II

That the Governing Council, without prejudice to the ongoing negotiations in the Intergovernmental Negotiating Committee, in order to address identified information needs of importing countries and on the basis of an assessment, conducted by the UNEP secretariat, of the costs, benefits and impacts of measures available, consider further elaboration of provisions, where appropriate, related to:

(a) Notification of control actions;

(b) Labelling of chemicals according to the London Guidelines and the FAO Code of Conduct;

(c) Specific Customs Code for PIC chemicals;

(d) Export notification; and

(e) Import decisions;

Organisation for Economic Cooperation and Development (OECD).

III

That the Governing Council:

(a) Acknowledge the need for information on toxic releases in the environment in order to identify priority problems, target risk management and measure results;

(b) Encourage countries to adopt Pollutant Release and Transfer Registers and/or other tools needed to generate such information and encourage IFCS to continue work in this area;

IV

That the Governing Council invite IFCS to conclude policy-level discussions in order to reach agreement on the entire set of cutpoints that would make up the harmonized system at or before its 1998 Inter-sessional Group meeting.

4. Issues related to risk reduction from a limited number of hazardous chemicals, including possible bans or phase-outs

1. That the Governing Council consider the conclusions of the deliberations of the Group of Experts on those issues as contained in the annex to its recommendation 4; b/

2. That the Governing Council:

(a) Invite the Intergovernmental Forum on Chemical Safety (IFCS) to develop criteria to identify chemicals, if any, other than persistent organic pollutants or those subject to controls under other legally binding instruments, such as the Montreal Protocol on Substances that Deplete the Ozone Layer, which create risks of international concern as identified in paragraphs 6 and 11 of the annex to recommendation 4 of the Group of Experts and, therefore, should be subject to possible concerted action in a manner similar to that being pursued for POPs; c/

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b/ See UNEP/GC.19/INF.7, page 14.

c/ Australia considered that the Group of Experts had not identified and discussed specific risks that are not already addressed or capable of being addressed under existing processes, to the extent that would warrant this recommendation. Furthermore, Australia noted that discussion at the meeting of the development of criteria to identify chemicals that might be subject to possible concerted action had been focused on situations where local activities or emissions lead to regional or global exposure (see paragraph 8 of the report of Drafting Group 2 on issues related to possible ban or phase-out of chemicals (UNEP/PIC/EG/1/CRP.3)). The extension, late in the meeting, of this recommendation to situations involving only local risks was therefore inappropriate.

(b) Call upon Governments and relevant international organizations (such as the World Customs Organization) to take action to encourage and facilitate the development of new customs codes and procedures which would support implementation of the PIC procedure and other chemical-risk-reduction measures;

(c) Call upon donors, bilateral/regional/international cooperation and assistance organizations and recipient countries to give a higher priority to programmes for the improvement of chemicals management, in particular with respect to the implementation of concerted efforts to ban or phase out a chemical.